

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

DEBORAH V. APPLEYARD, M.D. **Plaintiff** )  
)  
)  
)  
vs )  
)  
GOVERNOR JUAN F. LUIS )  
HOSPITAL AND MEDICAL CENTER )  
)  
**Defendant**

CASE NO. SX-14-CV-0000282

ACTION FOR: INJUNCTIVE RELIEF

**NOTICE OF ENTRY OF  
MEMORANDUM OPINION  
AND ORDER**

TO: RICHARD M. PRENDERGAST, ESQ.  
VINCENT FRAZER, ESQ.  
ANTHONY R. KITURE, ESQ.  
JUDGES OF THE SUPERIOR COURT  
MAGISTRATES OF THE SUPERIOR COURT  
LAW CLERKS; RECORD BOOK; LAW LIBRARY; IT

Please take notice that on July 28, 2014 a(n) MEMORANDUM OPINION  
AND ORDER dated July 28, 2014 was entered by the Clerk in the above-entitled  
matter.

Dated: July 28, 2014

Estrella H. George  
Acting Clerk of the Court

IRIS D. CINTRON  
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

DEBORAH V. APPELYARD, M.D., )  
)  
Plaintiff, )  
)  
v. )  
)  
GOVERNOR JUAN F. LUIS HOSPITAL AND )  
MEDICAL CENTER, a corporation of the )  
Government of the Virgin Islands, KENDALL )  
M. GRIFFITH, M.D., individually and as )  
Hospital Chief Executive Officer, RAYMOND )  
CINTRON, M.D., individually and as )  
Chairperson of the Hospital Medical Executive )  
Committee, O. ANNE TREASURE, M.D., )  
individually and as Chairperson of the Medical )  
Staff Quality Committee, MAVIS MATTHEW, )  
M.D., individually and as Interim Chief Medical )  
Officer, and JOHN DOES 1-10, )  
)  
Defendants. )  
)

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CIVIL NO. SX-14-CV-282

ACTION FOR INJUNCTION AND  
DECLARATORY RELIEF

(JURY)

**MEMORANDUM OPINION & ORDER**

THIS MATTER comes before the Court on Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction ("TRO Motion"), filed July 23, 2014, wherein Plaintiff Deborah V. Appleyard, M.D. ("Dr. Appleyard") seeks the entry of a temporary restraining order enjoining Defendants from maintaining Dr. Appleyard's suspension from her employment at the Governor Juan F. Luis Hospital ("Hospital") and from reporting Dr. Appleyard's suspension to any national database. For the reasons that follow, the TRO Motion will be granted and the matter will be set for preliminary injunction hearing at 2:00 p.m. on Friday, August 1, 2014.<sup>1</sup>

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<sup>1</sup> All facts set forth in this Memorandum Opinion and Order are taken from Plaintiff's TRO Motion and Verified Complaint, including exhibits. Factual findings set forth herein are made for the limited purpose of determining whether a TRO should issue and are applicable only for purposes of this Opinion and Order.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Dr. Appleyard, a spine and orthopedic specialist, was suspended from her employment at the Hospital on July 11, 2014. The suspension appears to be the culmination of a series of disciplinary actions taken against Dr. Appleyard for “disruptive behavior” since November 7, 2013. Dr. Appleyard contends that the disciplinary actions were part of a pattern of retaliation against her for reporting instances where co-workers and colleagues fell below appropriate standards of care. She further contends that the Hospital failed to comply with its own disciplinary procedures and with the suspension notice requirement of V.I CODE ANN. tit. 3, § 530(a). As a result, she argues that her due process rights secured by the Fourteenth Amendment have been violated.<sup>2</sup>

On July 18, 2014, Dr. Appleyard sent a letter to the Hospital to inform it that unless her suspension was annulled she would avail herself of all legal options including an appeal to the Public Employee Relations Board pursuant to 3 V.I.C. § 530(a) and pursuing legal remedy in the courts. Also on July 18, 2014, Dr. Appleyard was informed that her expiring contract would not be renewed. On July 23, 2014, Dr. Appleyard filed a Verified Complaint in this Court requesting injunctive relief to enjoin the Hospital from maintaining her suspension and from reporting her suspension to any national reporting database. Dr. Appleyard also seeks declaratory judgment that her suspension was wrongful and that the Hospital is bound by its reappointment of Dr. Appleyard to a new two-year term to commence September 27, 2014. Concurrent with her Verified Complaint, Dr. Appleyard filed her TRO Motion asking this Court to immediately enjoin the

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<sup>2</sup> The due process clause of the 14<sup>th</sup> Amendment to the United States Constitution is extended to the Virgin Islands with the same force and effect as in the United States or any State thereof by virtue of Revised Organic Act of 1954, § 3, 48 U.S.C. § 1561, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts and U.S. Constitution at 88 (preceding V.I. CODE ANN. tit. 1).

Hospital from maintaining her suspension and from reporting the suspension to any national reporting database.

## II. LEGAL STANDARD

A temporary restraining order is a stop-gap procedural device to preserve the status quo until a preliminary or permanent injunction can be considered. *Tootsie Roll Industries, Inc. v. Sathers, Inc.*, 666 F. Supp. 655, 658 (D. Del. 1987). Federal Rule of Civil Procedure 65(b) governs the procedures this Court follows in issuing a TRO.<sup>3</sup>

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

A TRO issued without notice “must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk’s office and entered in the record.” Fed. R. Civ. P. 65(b)(2). An order granting a restraining order must state the reasons why it was issued, state its terms specifically and describe in reasonable detail the acts restrained or required. Fed. R. Civ. P. 65(d).

The factors to be considered when evaluating a temporary restraining order are the same factors courts consider when evaluating whether to issue a preliminary injunction. *Bieros v. Nicola*, 857 F. Supp. 445, 445 (E.D. Pa. 1994). A preliminary injunction is an “extraordinary and drastic

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<sup>3</sup> “Federal Rule of Civil Procedure 65, governing preliminary injunctions and temporary restraining orders, applies in Superior Court pursuant to Rule 7. . . .” *Yusuf v. Hamed*, S. Ct. Civ. No. 2013–0040, 2013 WL 5429498, at \*3 n.2 (V.I. Sept. 30, 2013).

remedy,” never awarded as of right. *Yusuf v. Hamed*, 2013 WL 5429498, at \*3 (internal quotation omitted).

When determining whether preliminary injunctive relief is appropriate, the Superior Court must consider:

(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

*Id.* (adopting the Third Circuit preliminary injunction standard).

“A plaintiff seeking an injunction must meet all four criteria, as “[a] plaintiff’s failure to establish any element in its favor renders a preliminary injunction inappropriate.” *Conestoga Wood Specialties Corp. v. Sec’y of U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377, 382 (3d Cir. 2013) (citing *NutraSweet Co. v. Vit-Mar Enters., Inc.*, 176 F.3d 151, 153 (3d Cir. 1999)).

The four elements are discussed below.

### **III. DISCUSSION**

#### **A. Dr. Appleyard has established a likelihood of success on the merits**

Dr. Appleyard contends that the Hospital has violated her due process rights by failing to follow the procedures set forth in its bylaws and written policies, and that notice to her of the suspension as a regular employee of an instrumentality of the Government of the Virgin Islands was insufficient under Virgin Islands law. Under 3 V.I.C. § 530(a), when a regular employee of an instrumentality of the Government is demoted or suspended, the employee must be provided a written statement of the charges against her. 3 V.I.C. § 530(a)(1).

Under the Virgin Islands Administrative Code:

The notice shall allege with particularity:

- (1) The date, time and place of each occurrence which forms the basis of the proposed disciplinary action;
- (2) A statement of the nature of the charge, setting forth the facts upon which the department head relies to support the proposed action and sufficient to afford the employee notice and adequate opportunity to prepare and defend. If the department head or other party is unable to state the matters in detail at the time the notice is served, the notice may be limited to a statement of the issues involved. Thereafter upon application by the employee or the representative of the employee, a more definite and detailed statement shall be furnished.
- (3) The employee's right to appeal the proposed action, within ten (10) days following the date of receipt of the notice of charges, to the PERB.
- (4) Except as otherwise provided by law, that the action is proposed only and is subject to the approval of the Governor and review of the PERB, and further, that the proposed action, assuming approval by the Governor, will not take effect until the expiration of the time within which to appeal, or, if appeal is taken, until hearing and decision by the PERB.

3 V.I. ADC § 530-8.

The notice to Dr. Appleyard merely informed her that “effective today, July 11, 2014 your employment at the Juan F. Luis Hospital and Medical Center will be suspended until you comply with the actions outlined by the Medical Executive Committee in their letters sent to you.” Verified Complaint, Exhibit K.

The notice did not inform Dr. Appleyard of her right to appeal, nor did it provide a statement of the nature of the charges, setting forth facts upon which the Hospital relied in suspending her. The ability of Dr. Appleyard to pursue an appeal with the PERB has been compromised by the Hospital's failure to comply with the notice requirements of 3 V.I.C. § 530(a)(1) and 3 V.I. ADC § 530-8.

Furthermore, the facts as alleged by Dr. Appleyard indicate that the Hospital has failed to follow the disciplinary procedures laid out in the Hospital's Disruptive Medical Staff Member Policy and the Hospital's Medical Staff Bylaws. Dr. Appleyard has sufficiently established a



reasonable probability of success on the merits that the Hospital has violated her due process rights and that she is entitled to injunctive relief.

**B. Dr. Appleyard will suffer irreparable harm**

Dr. Appleyard argues that absent injunctive relief the suspension and reporting of the suspension will cause her to suffer loss of reputation, good will, and trade. “Irreparable harm is ‘certain and imminent harm for which a monetary award does not adequately compensate.’” *Yusuf*, 2013 WL 5429498, at \*6 (quoting *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003)). Loss of control of reputation, loss of good will, and loss of trade are all established grounds for irreparable injury. *Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3d Cir. 2004).

Dr. Appleyard’s professional reputation and trade is at risk within the tight-knit St. Croix community if the suspension is unwarranted but allowed to stand. Current and potential patients might avoid treatment from Dr. Appleyard. Colleagues might be hesitant to work with or trust her. These sort of harms, though very real, are difficult to quantify and a subsequent monetary award would be inadequate to repair the injury. Further, if the Hospital reports the suspension to a national reporting database, the harm done potentially extends beyond the Virgin Islands, in that Dr. Appleyard’s ability to practice medicine in other jurisdictions where she is licensed, and her ability to obtain a medical license in a new jurisdiction, may be compromised. Accordingly the Court finds that, absent injunctive relief, Dr. Appleyard faces irreparable harm.

**C. A balancing of the equities does not favor the Defendants**

The Court must also consider whether granting Dr. Appleyard’s request for a TRO will result in even greater harm to Defendants. The suspension of Dr. Appleyard relates to her professional conduct. She is described as an “excellent clinician” who has been placed on Focused

Professional Practice Evaluation “because of several incidents of disruptive behavior.” Verified Complaint, Exhibit E. The Medical Executive Committee’s compliance actions for which Dr. Appleyard was suspended required her to: (1) observe the chain of command to resolve disputes with professional staff; (2) refrain from using profanity at work; and (3) undergo comprehensive psychiatric and psychological evaluation within a set time period. Verified Complaint Exhibits J and K.

There is no suggestion that the suspension is the result of malpractice or concerns about Dr. Appleyard’s ability to provide the appropriate standard of care for her patients. The effect of restraining the Hospital from maintaining and reporting the suspension until it can be determined whether Dr. Appleyard’s due process rights have been violated does not put patients at risk.

The Hospital certainly has an interest in determining who can practice medicine at the facility. That interest is not lost, but merely delayed, by the granting of the temporary injunctive relief requested. And, the Hospital’s interest in the immediate enforcement of the suspension is outweighed by the potential for irreparable harm to Dr. Appleyard if the requested relief is not granted. This is particularly true in this context where the Hospital has failed to observe the procedures called for by its own policies and bylaws as well as Virgin Islands law. Accordingly, a balancing of the equities weighs in favor of granting the TRO.

**D. Granting the temporary restraining order is in the public interest**

The extraordinary remedy of injunction has public consequences that need to be considered in exercising the Court’s sound discretion. *Yusuf*, 2013 WL 5429498, at \*8. Dr. Appleyard argues that the public interest will be served by the issuance of the TRO because “[she] is the only spine surgeon on St. Croix and the only full-time resident spine surgeon in the entire territory.” TRO Motion, at 17. “Virgin Islanders whom might require emergency spine surgery or lumbar epidural



steroid injections under fluoroscopy are in serious jeopardy of having no local access to such care as a consequence of the unlawful suspension.” *Id.* at 18.

The Court hesitates to find that these facts alone demonstrate that the issuance of a TRO is in the public interest. It is unclear that the Hospital would be unable to continue to provide those services without Dr. Appleyard. The record does not establish that there are no other spine surgeons licensed to practice in the Virgin Islands who work part-time or who reside outside the territory but could perform emergency spine surgeries if and when those exigencies arise.

Nonetheless, the public clearly has a strong interest in ensuring that V.I. Government instrumentalities comply with procedural safeguards of Virgin Islands law, and applicable internal by-laws and written policies, prior to disciplining public employees. Here, it appears those procedures have been wholly ignored, and the Court finds that the issuance of a TRO requiring that laws and due process rights be enforced is consistent with the public interest.

#### **IV. CONCLUSION**

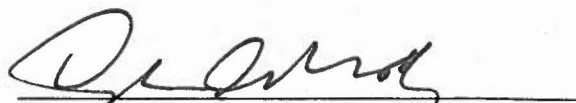
The Court concludes that Dr. Appleyard has demonstrated that she is entitled to the extraordinary remedy of the issuance of a temporary restraining order, and the Court will grant her TRO Motion. A hearing will be set on the matter to determine whether a preliminary injunction will enter. In light of the foregoing, it is hereby

ORDERED that Plaintiff’s TRO Motion is GRANTED; and it is further

ORDERED that Defendants are ENJOINED from maintaining and enforcing Dr. Appleyard’s suspension from employment with Defendant Hospital; and from reporting such suspension to any national reporting database or to any other entity, pending a hearing on Plaintiff’s request for entry of a preliminary injunction; and it is further

ORDERED that a hearing on Plaintiff's Motion seeking issuance of a preliminary injunction is set for 2:00 p.m. on Friday, August 1, 2014.

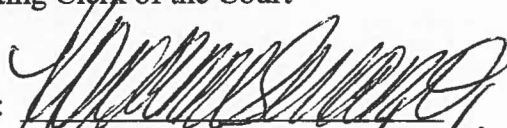
Dated: July 28, 2014.

  
DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:

  
Court Clerk Supervisor  
1281A